



UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 237

RIN 0412-AA64

Environmental Compliance Procedures for Domestic Activities

AGENCY: United States Agency for International
Development.

ACTION: Proposed rule.

SUMMARY: The United States Agency for International Development (USAID) proposes a rule to establish environmental compliance procedures pursuant to the National Environmental Policy Act (NEPA). This proposed rule is applicable to all USAID activities, both program and operating expense (OE) funded, that occur within the United States, its territories and or possessions. Program funded activities that occur entirely outside of the United States, its territories and possessions undergo environmental impact assessment and compliance review under separate regulatory authority.

This rule will ensure that the environmental consequences of USAID actions are considered prior to funding in accordance with NEPA.

DATES: Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Address all comments concerning this proposed rule to Dennis Durbin, M/MPBP/POL, USAID/Washington, 1300 Pennsylvania Avenue, NW, Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Dennis Durbin, Telephone: 202-712-0789, E-mail: ddurbin@usaid.gov.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Procedural Matters

I. Public Comment Procedures

How do I comment on the proposed rule?

- Because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington, USAID recommends sending all comments by electronic mail or by fax to the e-mail address or fax number listed directly below (please note, all comments must be in writing to be reviewed).

You may submit written electronic comments by sending electronic mail [e-mail] to: ddurbin@usaid.gov.

Please submit comments as a Microsoft Word file avoiding the use of any special characters and any form of encryption.

- Surface Mail (again, not advisable due to security screening): Dennis Durbin, M/MPBP/POL, USAID/Washington, 1300 Pennsylvania Avenue, NW, Washington, DC 20523

Please make your written comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

USAID may not necessarily consider or include in the Administrative Record for the final rule comments that USAID receives after the close of the comment period (see DATES) or comments delivered to an address other than those listed above (see ADDRESSES).

II. Background

Why is USAID Proposing This Rule?

The procedures set forth in this proposal ensure that USAID actions and expenditures comply with the National Environmental Policy Act (NEPA), Pub. L. 91-190 42 U.S.C. 4321 *et seq.*, as implemented by the Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500 through 1508). These procedures apply specifically to Agency actions undertaken in the United States, its territories or possessions. It is USAID policy to ensure that the environmental and social consequences of USAID financed activities are identified and considered by USAID prior to a final decision to proceed and that appropriate environmental safeguards are adopted.

Do USAID Overseas Activities Undergo Environmental Review?

Yes. USAID environmental compliance for Agency program funded activities pursuant to the Foreign Assistance Act and the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 83-480, enacted July 10, 1954) which address such basic problems as hunger, malnutrition, overpopulation, disease, disaster, governance, economic growth, energy security, climate change, deterioration of the environment and the natural resource base, illiteracy, and the lack of adequate housing and transportation, and to facilitate economic development

is addressed under 22 CFR part 216. The existing rule for overseas activities together with this proposal for domestic activities will ensure environmental stewardship for USAID activities.

What Type of Activities Does the Proposed Rule Cover?

These proposed NEPA implementing procedures for considering the environmental consequences apply to all proposed Agency activities in the United States, its territories or possessions (hereinafter domestic activities). These activities include domestic activities such as building operations, acquisition and operation of fleet vehicles, personnel salary and administration, procurement of supplies and services, USAID facility construction and maintenance, payment of rent and utilities, general USAID internal operations and administration, and other OE funded activities.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review
These proposed regulations are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These proposed regulations will not have an effect of \$100 million or more on the economy. They will not adversely

affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These proposed regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. President Clinton's Presidential memorandum of June 2, 1998, requires us to write new regulations in plain language. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or

reduce their clarity? (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A section appears in bold type and is preceded by the symbol and a numbered heading, for example) (5) Is the description of the proposed regulations in the "SUPPLEMENTARY INFORMATION" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the "ADDRESSES" section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601-612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed rule would impact approximately 50 USAID partners per year where their proposed activities would undergo the procedural NEPA requirements under this proposal. Most of

these entities would be academic institutions in the United States who partner with foreign entities for research and provision of development assistance. USAID foreign assistance actions are already reviewed for environmental compliance under the procedures in 22 CFR part 216. The NEPA compliance procedures stated in this proposal are not substantially different from those USAID undertakes from the environmental compliance procedures USAID under 22 CFR part 216. Therefore, we have determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

These proposed regulations do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year; nor do these proposed regulations have a significant or unique effect on State, local, or tribal governments or the private sector.

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Therefore, we have determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12612, Federalism

The proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, we have determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Paperwork Reduction Act

These regulations do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of this rule is Dennis Durbin United States Agency for International Development.

List of Subjects in 22 CFR Part 237

Environmental impact statements, Environmental protection, Pesticides and pests.

For the reasons discussed in the preamble, the United States Agency for International Development proposes to add 22 CFR part 237 as follows:

PART 237—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

Sec.

237.1 Introduction.

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237.12 Records and reports.

AUTHORITY: 42 U.S.C. 4321-4347.

§237.1 Introduction.

(a) The procedures set forth in these regulations ensure that the United States Agency for International Development (USAID) actions and expenditures comply with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by the Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500 through 1508). These procedures apply specifically to Agency actions undertaken in the United States, its territories or possessions.

(b) USAID environmental compliance for Agency program funded activities pursuant to the Foreign Assistance Act and the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 83-480) which address such basic problems as hunger, malnutrition, overpopulation, disease, disaster, governance, economic growth, energy security, climate change, deterioration of the environment and the natural resource base, illiteracy, and the lack of adequate housing and transportation, and to facilitate economic development is addressed under 22 CFR part 216. Together, these two regulations ensure environmental stewardship for USAID activities.

(c) It is USAID policy to ensure that the environmental

and social consequences of USAID financed activities are identified and considered by USAID prior to a final decision to proceed and that appropriate environmental safeguards are adopted.

§237.2 Scope.

These NEPA implementing procedures for considering the environmental consequences apply to all proposed Agency activities in the United States, its territories or possessions (hereinafter domestic activities). These activities include domestic activities such as building operations, acquisition and operation of fleet vehicles, personnel salary and administration, procurement of supplies and services, USAID facility construction and maintenance, payment of rent and utilities, general USAID internal operations and administration, and other OE funded activities.

§237.3 Definitions.

For the purposes of this part, the following definitions apply:

Action. Action and Major Federal Action as described in 40 CFR 1508.18.

Adaptive Management. The ongoing process during implementation of an activity where the Implementing Officer (COR, AOR, or equivalent) manages the activity or

action to the mitigation measures and Environmental Management and Monitoring Plan that have been developed under the Environmental Assessment or Environmental Impact Statement; and, makes formal adjustments and amendments, in conjunction with the Environmental Assessment or Environmental Impact Statement signatory, as needed to ensure optimal environment soundness throughout the life of the activity.

Administrator. The head or acting head of the U.S. Agency for International Development. The final decision-making executive on Environmental Impact Statements.

Agency. The United States Agency for International Development. Also referred to as USAID.

Agency Environmental Coordinator (AEC). USAID's executive management officer whose duties include oversight of the Agency's compliance with US environmental laws, regulations, and directives, including this Regulation and its companion for program funded activities, 22 CFR part 216.

Alternative Arrangements. Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of this Regulation and the White House Council on Environmental Quality (CEQ) regulations, USAID shall

consult with the CEQ about Alternative Arrangements. USAID and CEQ will limit such arrangements to actions necessary to control the immediate impacts of the emergency.

Bureau Environment Officer (BEO). The USAID senior environmental regulatory officer for a given Bureau or Independent Office. Each operational Bureau or Independent Office has a BEO who oversees environmental compliance under this Regulation for all Operating Expense Activities in their Bureau or Independent Office. This expert environmental compliance officer typically also oversees compliance in their Bureau or Independent Office on program funded activities under 22 CFR part 216. They are appointed in writing by an Assistant Administrator or an Independent Office Director with the concurrence of the AEC.

Categorical exclusion. Categorical exclusions (CEs) describe categories of actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not normally involve significant environmental impacts.

Connected actions. Actions which may or may not be funded by USAID but which are closely related and therefore should be discussed in the same USAID Environmental

Assessment or Environmental Impact Statement. Actions are connected if they:

- (1) Automatically trigger other actions which may require Environmental Impact Statements by USAID or other agencies;
- (2) Cannot or will not proceed unless other actions are taken previously or simultaneously; or
- (3) Are interdependent parts of a larger action and depend on the larger action for their justification. Under 22 CFR part 216 this same concept is typically referred to as Associated Facilities.

Cooperating Agency. Any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. Also, a State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Council on Environmental Quality (CEQ). The White House Council in the Executive Office of the President that among other duties oversees National Environmental Policy Act (NEPA) compliance across all Executive Branch agencies; develops Executive Branch agency-wide policy and

regulations for implementing the procedural provisions of NEPA; and resolves interagency disagreements concerning proposed major Federal actions.

Cumulative impact. The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

DEIS. Draft Environmental Impact Statement (see Environmental Impact Statement).

Environment. Environment shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Environmental Assessment (EA). EA is defined in the CEQ regulations (40 CFR 1508.9), and is used to assess the environmental impact of proposed actions where a

categorical exclusion is not appropriate and in which the potential for significant environmental impacts are not clearly established. When an EA is performed resulting in a Finding of No Significant Impact (FONSI), the environmental review process is completed. If the EA process results in a finding that the proposed activity will incur significant environmental impact an Environmental Impact Statement must be prepared. Note that the term EA in this regulation differs from that in 22 CFR part 216 and they should not be confused or conflated.

Environmental Impact Statement (EIS). An EIS is defined in the CEQ Regulations at 40 CFR 1508.11 and is a detailed study of the reasonably foreseeable environmental and social impacts, both positive and negative, of a proposed USAID action that results in a significant impact on the United States, or the global commons.

Environmental justice. The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of EAs and EIAs that their related actions. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share

of the negative environmental consequences resulting from USAID actions.

Environmental Monitoring and Management Plan (EMMP).

An EMMP is based on the findings of an EA or EIS and describes the activity or process of the activity associated with an environmental impact and associated mitigation measures and conditions to serve as environmental safeguards and monitoring requirements. They are an everyday road map used by the COR or AOR or comparable USAID officer and by the grantee or contractor to ensure environmental soundness throughout the life of an action. EMMPs are a mechanism to identify when environmental issues begin to arise during the implementation of an action to ensure they are addressed before they become a problem

EPA or USEPA - the United States Environmental Protection Agency. An independent agency in the Executive Branch of the United States government that is among other duties is responsible for supporting CEQ's implementation of NEPA under the EPA Office of Federal Activities; and for leading the US government's pesticide registration, safety, enforcement, and regulatory functions.

FEIS. Final Environmental Impact Statement (See Environmental Impact Statement).

Finding of No Significant Impact (FONSI). A document briefly providing the reasons why a proposed action will not have a significant impact on the environment and for which an Environmental Impact Statement (EIS) will not be prepared. In cases when environmental impacts are small and easily mitigated, a Mitigated FONSI may be appropriate and will identify the mitigative measures and funding requirements.

Impact (Effect). A direct result of an action which occurs at the same time and place; or an indirect result of an action which occurs later in time or in a different place and is reasonably foreseeable; or the cumulative results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions (40 CFR 1508.8).

Implementing Officer. The Contracts Officer Representative (COR), or Agreements Officer Representative (AOR) or comparable USAID officer who manages a given contract, grant, lease or similar agreement. The Implementing Officer has the primary responsibility for ensuring compliance with this Regulation of Operating Expense funded activities they manage.

No Action Alternative. The alternative where

current conditions and trends are projected into the future without another proposed action (40 CFR 1502.14(d)).

Record of Decision (ROD). A concise public document that records USAID's decision(s) concerning a proposed action for which the Agency has prepared an Environmental Impact Statement (EIS). The ROD is prepared in accordance with the requirements of the Council on Environmental Quality NEPA regulations (40 CFR 1505.2). A ROD identifies the alternatives considered in reaching the decision, the environmentally preferable alternative(s), factors balanced by the agency in making the decision, whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why they were not. (See Environmental Impact Statement).

Responsible Action Officer. The Agency officer principally responsible for the approval of action memoranda, authorization of funds, and similar documents relating to a given Agency action to which by these regulations apply. They are normally the Assistant Administrator of a Bureau, Director of an Independent Office, or Director of a USAID Country Mission.

Scoping. An early and open process for determining

the extent and variety of issues to be addressed and for identifying the significant issues related to a proposed action (40 CFR 1501.7).

Significantly. "Significantly" as used in NEPA requires considerations of social, spatial and temporal context and intensity:

(1) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(2) Intensity. This refers to the severity of the environmental impact.

USAID. The United States Agency for International Development. An independent agency in the Executive Branch of the United States government responsible for leading international development programs.

§237.4 Responsibilities of Agency officials.

(a) General. Each Bureau or Independent Office within the Agency shall be responsible for:

(1) Implementing these regulations early and incorporating them into its normal decision-making and activity management processes;

(2) Providing adequate funding, staff resources and sufficient time to complete required environmental impact assessment work under this Regulation prior to obligation of funds, and implement any needed actions to ensure environmental soundness throughout the life of the activity.

(b) Responsible Action Officer. (1) Responsible Action Officer means the Agency officer principally responsible for the approval of action memoranda and other documents relating to a given Agency action which by these regulations apply. Ordinarily, the Responsible Action Officer will be the Assistant Administrator or equivalent, country mission director, or Independent Office director whose office has responsibility for a given action.

(2) Preliminary environmental evaluations. Early in the process of considering any possible action the Responsible Action Officer shall review the action to determine if it may cause potential significant environmental effects on the environment of the United

States. This review shall be shared with the relevant Bureau Environmental Officer for review and advice before proceeding to ensure timely and cost effective implementation of this Regulation. A proposed action shall be reviewed initially to determine into which of the following three basic categories of action it falls:

(i) Actions normally requiring environmental impact statements;

(ii) Actions categorically excluded from environmental impact statements; or

(iii) Actions normally requiring environmental assessments (as defined by 40 CFR 1508.9). If the Responsible Action Officer concludes that the proposed action is a major action potentially having significant effects in the United States they shall, in cooperation with their BEO and any other appropriate USAID officials, carry out the steps described in these regulations.

(c) Bureau Environmental Officer (BEO). The BEO shall have the primary responsibility for approving the recommendations from the RAO and advising on environmental compliance procedures for actions funded by their Bureau or Independent Office. The BEO shall:

(1) Review and approve in writing all recommended

decisions and documents from the Responsible Action Officers.

(2) Provide advice and training to Bureaus, Independent Offices, and country missions and their staff to ensure optimal compliance with this Regulation.

(3) Advise the Agency Environmental Coordinator on Environmental Impact Statements and overall trends or critical issues in implementing this Regulation.

(d) USAID General Counsel (GC). The GC or their appointed attorney shall:

(1) Advise the BEO and AEC on matters of law as they may pertain to this Regulation.

(2) Represent USAID in any responses to legal challenges that may arise in matters related to this Regulation, in conjunction with the Department of Justice and any other appropriate Federal agencies.

(e) Agency Environmental Coordinator (AEC). The AEC shall:

(1) Oversee and ensure the Agency's compliance with this Regulation as part of his or her oversight of Agency environmental policies, Federal Regulations and procedures for domestic and international activities.

(2) Arbitrate unresolved differences among

Responsible Action Officers, BEOs, and other USAID officials to ensure effective implementation of this Regulation.

(3) Concur in the appointment of BEOs by their Assistant Administrator or Independent Office Director and who will implement this Regulation to ensure the BEO's professional technical qualifications.

(4) Participate with the relevant BEO on any Environmental Impact Statement (EIS) process undertaken through this Regulation and forward any EIS documents to the USAID Administrator for his or her decision per §237.6(c)(1).

(5) Lead USAID representation to the White House Council on Environmental Quality (CEQ) and other Executive Branch agencies on matters relating to implementing this Regulation.

§237.5 Applicability of procedures.

(a) The procedures herein apply to all USAID funded domestic activities. All USAID program funded activities are reviewed under the environmental compliance procedures at 22 CFR part 216.

(b) Emergency procedures. Requests for deviations from

the procedures in this Regulation because of emergency circumstances (40 CFR 1506.11) shall be evaluated after consultation with CEQ. Such consultations are rapid, do not materially affect the need to immediately address emergencies, and often result in more effective responses and results including increased lives and property saved.

(c) Emergency actions. (1) Emergency circumstances may require immediate actions that preclude following standard NEPA processes. Immediate emergency actions necessary to protect the lives and safety of the public should never be delayed in order to comply with NEPA. In the event of emergency circumstances, the responsible bureau or office should coordinate with the relevant Bureau Environmental Officer (BEO) and the Agency Environmental Coordinator (AEC) as soon as practicable. When time permits, rapid environmental review and documentation should be prepared to the greatest extent practicable in accordance with these procedures. These actions should be taken as soon as is necessary to ensure the protection and safety of the public. However, the Agency shall consider and mitigate the impacts that the response action could have on the human and natural environment when developing the response strategy. After immediate first response saving of life and property, if following the normal

procedures below is not possible to continue preserving lives and property USAID will follow the CEQ guidance on Alternative Arrangements. Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for NEPA compliance.

(2) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of this regulation and the related CEQ regulation (40 CFR part 1500), USAID will consult with the CEQ about Alternative Arrangements. This consultation will be facilitated by the Agency Environmental Coordinator with support from the relevant Bureau and the General Counsel's Office. USAID and CEQ will limit such Alternative Arrangements to actions necessary to control the immediate impacts of the emergency. Other mid and long term actions remain subject to the below NEPA review.

(3) Categorical exclusions. Where emergency circumstances make it necessary to take an action before a determination is made regarding whether an extraordinary circumstance would preclude the use of a Categorical Exclusion, the Responsible Action Officer must make the determination in concert with the relevant Bureau Environmental Officer.

(4) Environmental Assessments. Where emergency circumstances make it necessary to take an action that requires an EA before the EA can be completed, the Responsible Action Officer must agree with the Bureau Environmental Officer to develop Alternative Arrangements to meet the requirements of these procedures and CEQ Regulations pertaining to Environmental Assessments. Alternative arrangements should focus on minimizing adverse environmental consequences of the proposed action and the emergency. To the maximum extent practical, these Alternative Arrangements should include the public notification and involvement that would normally be undertaken for an Environmental Assessment for the action at issue. The Bureau Environmental Officer may grant an Alternative Arrangement. Any Alternative Arrangement must be documented and notification provided to the Council on Environmental Quality with the facilitation by the Agency Environmental Coordinator at the earliest opportunity.

(5) Environmental Impact Statements. (i) CEQ may grant Alternative Arrangements for, but not eliminate, NEPA compliance where emergency circumstances make it necessary to take actions with potential significant environmental impacts without observing other provisions of the CEQ

Regulations (40 CFR 1506.11, CEQ Regulations). In these situations, the processing times may be reduced or, if the emergency situation warrants, preparation and processing of EISs may be abbreviated. A request for Alternative Arrangements must be submitted to CEQ. The Responsible Action Officer shall consult with the Agency Environmental Coordinator as early as possible so that the Agency Environmental Coordinator can notify CEQ as early as possible.

(ii) For projects undertaken by an applicant, the Responsible Action Officer in conjunction with their Bureau Environmental Officer will inform the Agency Environmental Coordinator. The Agency Environmental Coordinator will consult CEQ about Alternative Arrangements for complying with NEPA and work with the Responsible Action Officer and Bureau Environmental Officer to develop and implement a time sensitive and workable solution.

(d) Categorical exclusions. The following categories of actions have been found to not normally have a significant effect on the natural or physical environment and for which an Environmental Assessment or an Environmental Impact Statement is, absent extraordinary circumstances, not required:

(1) Internal personnel, fiscal, management, and administrative activities, such as recruiting, processing, paying, recordkeeping, lease payments, rent and utility payments, medical care, resource management, budgeting, personnel actions, official travel, and reductions, increases, realignments, or relocation of personnel.

(2) Actions at USAID owned, operated, or leased facilities involving routine facility operations and maintenance, repair, and grounds keeping, and acquisition actions and contracting actions for management and operation of government facilities. Examples include acquisition and payment of office supplies and utilities, equipment, claims and indemnities, printing and reproduction, transportation of goods, and information technology software and systems. To qualify for a Categorical Exclusion under this subsection, such actions must be implemented under any Greening the Government or comparable White House directives.

(3) Minor rehabilitation, restoration, renovation, or revitalization of USAID owned, operated, or leased facilities to include: replacement, acquisition, and installation of information technology and similar office equipment; and minor or small-scale construction of ancillary facilities on previously disturbed areas adjacent

to or on the same property as existing facilities and compatible with current land use. To qualify for a Categorical Exclusion under this subsection, such actions must be implemented under any Greening the Government or comparable White House directives to the extent practicable.

(4) Document and information exchanges.

(5) Education, technical assistance, or training programs except to the extent such programs include activities directly or indirectly affecting the environment (such as construction facilities, etc.)

(6) Controlled experimentation exclusively for the purpose of research and field evaluation which are confined to small areas, are carefully monitored, and that follow any applicable Federal and State environmental and safety regulations. Small areas typically include controlled access facilities including laboratories, small plots of land, or evaluations of existing programs in limited geographic areas.

(7) Analysis, studies, academic, or research workshops and meetings.

(8) Institutional buildings grants to research and educational institutions in the United States such as those provided for under section 122(d) and Title XII of Chapter

2 of Part I of the Foreign Assistance Act (22 USCA sections 2151 p. (b) 2220a. (1979)); Construction of new facilities is not included.

(9) To use a Categorical Exclusion, the following three screening conditions must be met:

(i) The action has not been segmented. The BEO must determine that the action has not been segmented to meet the definition of a CE. Segmentation can occur when an action is broken down into small parts. The activity approved under a CE must be a single and complete project that operates with independent utility. The scope of an action must include the consideration of Connected Actions as defined by 40 CFR 1508.25 and the effects when applying extraordinary circumstances must consider Cumulative Impacts as defined by 40 CFR 1508.7.

(ii) No Extraordinary circumstances exist for the activity being considered under these NEPA procedures. If a determination is made that the action involves one or more Extraordinary Circumstances it would preclude the use of a CE (see paragraph (d) of this section).

(iii) One CE encompasses the proposed action. Identify a CE that encompasses the proposed action. If multiple CEs could be applicable, proceed only when it is clear that the entire proposed action is covered by one CE.

Any limitation raised in other potentially applicable CEs should be considered when determining whether it is appropriate to proceed without further analysis in an EA or EIS. If there is no appropriate single CE, then an EA or an EIS must be prepared before proceeding with the proposed action.

(e) Extraordinary circumstances. If the action involves any of the following Extraordinary Circumstances, a Categorical Exclusion is precluded and the proposed action shall require additional environmental analysis through an Environmental Assessment or Environmental Impact Statement:

(1) The potential for significant adverse direct or indirect impact on the environment, public health, or safety.

(2) The proposed action is known or expected to impose uncertain or unique environmental risks.

(3) The proposed action is of greater scope or size than is normal for this category of action.

(4) The proposed action is known or expected to have adverse or significant adverse effect on federally listed threatened or endangered species, or their critical habitat.

(5) The proposed action is known or expected to

significantly affect national or international natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value.

(6) The proposed action is known or expected to adversely affect domestic or international environmentally important natural resource areas such as parks, forests, wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, coral reefs, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.

(7) The proposed action is known or expected to cause significant adverse air quality effects.

(8) The proposed action is known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas.

(9) The proposed action may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans.

(10) The proposed action will either procure or

use pesticides in any quantity and whether funded by USAID or some other entity. USAID uses the term pesticide as defined by the US Environmental Protection Agency and includes chemical and biological substances.

§237.6 Procedures.

For USAID activities not categorically excluded, an Environmental Assessment or Environmental Impact Statement must be prepared. In deciding whether to prepare an Environmental Assessment or Environmental Impact Statement, the Responsible Action Officer shall make an initial review in the early planning stages of a proposed action to identify and evaluate potential environmental effects of the actions and all reasonable measures which may be taken to mitigate adverse impacts and submit it to the relevant Bureau Environmental Officer for their review and written approval before proceeding. The BEO may require changes if in their judgment such are needed to ensure environmental soundness.

(a) Scoping. Scoping shall commence as soon as the Agency is actively preparing to make a decision on one or more alternative means to accomplish a proposed activity.

(1) Scoping identifies the significant potential environmental issues related to the proposed

action and determines the focused scope of the issues to be addressed in the EA or EIS increasing its effectiveness and focusing resources on the key issues. Persons potentially affected by the environmental aspects of the proposed action shall be invited to participate in this Scoping process. Scoping is applicable to both the EIS process and EA processes and results in a written Scoping statement that includes the following:

- (i) A determination of the scope and significance of issues to be analyzed in the EA or EIS, including direct, indirect, and Cumulative Effects of the project and its Connected Actions on the environment.

- (ii) A brief discussion of issues identified but subsequently eliminated during the scoping process because they were thought not to have a significant impact on the environment, based on expert opinion, or were addressed in another recent environmental review process.

- (iii) A time line for preparation of the environmental analysis that includes a tentative planning and decision making schedule.

- (iv) A description of how the analysis will be conducted and the disciplines that will participate in the analysis.

(v) A description of how the public will be consulted which at a minimum will include at the draft stage of the EA or EIS.

(vi) Any public Environmental Assessments and other Environmental Impact Statements which are being or will be prepared by USAID or any other Federal agency that are related to but are not part of the scope of the impact statement under consideration.

(vii) A list of any Cooperating Agencies identified by USAID or who ask to be given this official status and other environmental review and consultation requirements so the lead and Cooperating Agencies may prepare any other required analyses and studies concurrently with, and integrated with, the environmental impact statement.

(2) The Scoping activities result in a Scoping Statement that shall be in writing and be reviewed and approved by the responsible Bureau Environmental Officer (BEO). Once approved by the BEO, the Scoping Statement may be circulated as provided in paragraph (a)(3) of this section.

(3) Circulation of scoping statement. In addition to its internal processing and review, USAID may circulate copies of the written scoping statement for an EA. For EIS level activities, the Agency shall circulate copies of the

written scoping statement, together with a request for written comments to selected Federal agencies if the Agency believes comments by other Federal agencies will be useful in the preparation of an EA or Environmental Impact Statement. Comments received from reviewing federal agencies will be considered in the preparation of the Environmental Impact Statement and be included in the project file.

(4) All final Scoping documents and EAs will be made available to the public on USAID's public website. To the extent that there is classified or administratively controlled information (such as contract or agreement sensitive material) it shall be redacted before the remaining parts of these documents are made available in this way.

(b) Preparation of an Environmental Assessment. (1) Should an Environmental Assessment (EA) be required, the Bureau or Independent Office supporting the activity shall be responsible for its preparation.

(2) A copy of the EA shall accompany the proposal throughout the Agency internal activity review and approval process.

(3) If, on the basis of an EA, it is determined that an Environmental Impact Statement (EIS) is not required, a

Finding of No Significant Impact (FONSI) as described in 40 CFR 1508.13 will be prepared.

(4) The responsible Bureau Environmental Officer (BEO) will either approve in writing the FONSI or request reconsideration by the officer responsible for preparation of the EA and FONSI, stating the reasons for the request.

(5) Content and form. The EA shall be based upon the Scoping Statement and shall address the following elements:

(i) Summary. The summary shall stress the major conclusions, areas of controversy, if any, and the issues to be resolved. To the extent specific mitigating measures and Environmental Monitoring and Management Plan (EMMP) are required, they shall be listed in summary form here. Should mitigating measures and EMMP be required, they shall be provided, along with the entire EA, to the contracting or agreement officer and be required to be included in any acquisition or agreement documents that may be needed to implement the activity. This will ensure the contractor or grantee is fully informed of their environmental responsibilities and that funding is included to implement them.

(ii) Purpose and need. This section shall briefly

specify the underlying purpose and need of the proposed activity and discuss the range of alternatives considered but not analyzed to meet the project objectives.

(iii) Alternatives including the proposed action.

This section should present the environmental impacts of the proposal and its alternatives in comparative form that provides a clear basis for selection among project alternatives. The Alternatives Analysis section should explore and evaluate reasonable alternatives for detailed comparative consideration and evaluation. There shall be at least one practical Alternative to the recommended action plus a No Action Alternative. This section will also briefly discuss the reasons for eliminating those Alternatives which were not included in the detailed study. The document must also include a discussion of the No Action Alternative. Based on the comparative analysis of each Alternative, the Agency will identify the preferred Alternative if one exists.

(iv) Affected environment. The EA shall succinctly describe the existing environmental baseline conditions of the area(s) to be affected by each of the alternatives for the proposed action. The descriptions shall be no longer than is necessary to understand the effects of the alternatives, but shall be sufficient to determine during

implementation of the action the degree to which it is improving, harming or having no effect on the environment. Data and analyses in the EA shall be commensurate with the significance of the impact with less important material summarized, consolidated or simply referenced. This section may be brief to enable a greater focus on the analysis of environmental consequences in paragraph (b) (5) (v) of this section.

(v) Environmental consequences. This information forms the analytic basis for the alternatives analysis under paragraph (b) (6) (iii) of this section. It will include the environmental impacts of the Alternatives; any adverse effects that cannot be avoided should the proposed action be implemented; and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. It should not duplicate discussions in paragraph (b) (6) (iii) of this section. This section of the Environmental Assessment should include discussions of direct environmental effects and their significance; indirect effects and their significance; Cumulative Impacts and Connected Actions, Environmental Justice, possible conflicts between the proposed action and land use plans, policies and controls for the areas concerned; energy

requirements and conservation potential of various alternatives and mitigation measures; natural or depletable resource requirements and conservation potential of various requirements and mitigation measures; urban quality; historic and cultural resources and the design of the built environment, including the reuse and conservation potential of various alternatives.

(vi) The EA will include appropriate mitigation measures to compensate for adverse environmental impacts of the preferred alternative, or the final alternative selected for funding and shall use the mitigation hierarchy as defined in 40 CFR 1508.20. This shall be in the form of an actionable Environmental Mitigation and Monitoring Plan to enable the Activity Manager, Contract Officer Representative (COR), or comparable officer to adaptively manage the activity for environmental soundness throughout implementation.

(vii) List of preparers. The Environmental Assessment shall list the names and qualifications (expertise, experience, professional discipline) of the persons primarily responsible for preparing the Environmental Assessment or significant background papers.

(viii) Appendix. An appendix or appendices may be prepared.

(ix) Classified material. An EA will not normally include classified or administratively controlled material. However, there may be situations where environmental aspects cannot be adequately discussed without the inclusion of such material. The handling and disclosure of classified or administratively controlled material shall be governed by 22 CFR part 9. Those portions of an EA which are not classified or administratively controlled will be made available to persons outside the Agency as provided for in 22 CFR part 212.

(x) Public distribution and review. If the EA results in a Finding of No Significant Impact (FONSI), the EA and proposed FONSI shall be made available for a 30 day public review and comment period before the FONSI is signed and a decision to take any action is made. If the EA results in a determination that an EIS is required, public participation shall be undertaken in accordance with the procedures described in paragraph (b)(3) of this section.

(c) Environmental Impact Statement. (1) Procedure and Content. If the Agency determines an Environmental Impact Statement is required at the initial stages of the project development, or as a result of a completed Environmental Assessment, the environmental impact statement and associated documentation will be prepared by the

originating office in accordance with section 102(2)(c) of NEPA, this section, and the CEQ regulations. The responsible bureau or office will submit the document through the Agency Environmental Coordinator to the Administrator who, after such review as deemed necessary, will circulate the document in accordance with section 1502.19 of the CEQ regulations. Specifically, the following steps, as discussed in the CEQ regulations, will be followed in preparing an EIS:

(i) A notice of intent to prepare a draft EIS will be published as described in 40 CFR 1501.7.

(ii) Scoping, as described in 40 CFR 1501.7, will be conducted.

(iii) The format and contents of the draft and final EIS shall be as discussed in 40 CFR part 1502.

(iv) Comments on the Draft EIS (DEIS) shall be invited as set forth in 40 CFR 1503.1. The minimum period to be afforded for comments on a DEIS shall be 45 days. The Agency will identify any conflicting statutory mandates that would preclude the 45 day comment period. Emergency circumstances are described in §237.3 when compliance with standard NEPA procedures is not feasible.

(v) The requirements of 40 CFR 1506.9 for filing of

documents with the Environmental Protection Agency's Office of Federal Activities shall be followed.

(vi) The responsible Bureau or Independent Office shall examine carefully the basis on which supportive studies have been conducted to assure that such studies are objective and comprehensive in scope and in depth.

(2) Applicability. An EIS shall be prepared when agency actions potentially significantly affect:

(i) The global commons;

(ii) The environment of the United States (or its territories); or

(iii) Other aspects of the environment at the discretion of the USAID Administrator.

(3) Effects on the United States.--Content and form. An EIS relating to paragraph (a)(2) of this section shall comply with the CEQ Regulations (40 CFR part 1500) and these procedures.

(4) Processing and review within USAID. (i) All USAID funded domestic activities and any amendments thereto are subject to these procedures prior to implementation of the approved activity unless otherwise exempted.

(ii) The Bureau Environmental Officer's functions may not be delegated - other than to an appointed Deputy Bureau Environmental Officer, if there is one, and who will act in

this decision making capacity only in the absence of the BEO.

(A) In cases when a Draft and Final EIS is prepared, each will be reviewed and cleared by the Agency Environmental Coordinator and the Office of the General Counsel.

(B) The Agency Administrator or Acting Administrator shall give final approval of an EIS. This may not be delegated other than to the Deputy Administrator who may only act in the capacity in the absence of the Administrator.

(C) A public Record of Decision (ROD) stating what the decision was; identifying alternatives that were considered, including the environmentally preferable one(s); discussing any national policy considerations that entered into the decision; and summarizing an Environmental Monitoring and Management Plan (EMMP) to enforce applicable for any mitigation that may be required, will be prepared. This record of decision (ROD) will be prepared at the time the decision is made, or if appropriate, when the agency makes its recommendation for action to Congress. (See 40 CFR 1505.2). It will also be included along with the full Final EIS in the appropriate acquisition or agreement documents to ensure it is funded and fully implemented.

(5) Environmental Mitigation and Monitoring Plans (EMMPs). Projects and programs for which Environmental Assessments, or Environmental Impact Statements have been prepared, and where adverse environmental impacts are anticipated, must include monitoring of the change in environmental conditions during project implementation, and monitoring of environmental mitigation measures. These are laid out in an Environmental Mitigation and Monitoring Plan (EMMP) that will be incorporated into appropriate acquisition or assistance agreements to ensure they are transparent, widely understood, and funded. This will require recording of baseline data prior to starting the proposed activity, and monitoring environmental conditions as the activity progresses. Originating offices of USAID will formulate activity specific monitoring procedures during the activity life cycle. Throughout the environmental analysis process, the Agency will consider mitigation measures to avoid or minimize environmental harm. The USAID Implementing Officer responsible for this will be the Activity Manager or the Contracting Officer's or Agreements Officer's Representative or similar officer who manages the activity. Mitigation measures include:

- (i) Avoiding the impact altogether, by

eliminating the action or parts of the action, or by redesigning or redirecting the activity to eliminate such actions or parts of the action.

(ii) Minimizing impacts by limiting the degree or magnitude of the action, its implementation, and its subsequent impacts on the environment.

(iii) Rectifying the impact; by repairing, rehabilitating, or restoring the adverse effect of the proposed action on the environment.

(iv) Reducing or eliminating the impact over time, by preservation and maintenance operations during the life of the action.

(v) Compensating for the impact, by replacing or providing substitute resources or ecological functions.

(6) Mitigation and monitoring for EA and EIS level analysis. (i) When the environmental analysis described in this Regulation proceeds to an EA or EIS, mitigation measures, if any, will be clearly assessed and those selected for implementation will be identified in the FONSI or the ROD. Only those practical mitigation measures that can reasonably be accomplished as part of a proposed alternative will be identified. The Agency is required to implement those identified mitigations, because they are

commitments made as part of the Agency decision to proceed with the activity.

(ii) Mitigation identified in a FONSI or ROD including any EMMP shall become part of the budget or funding document, or other legal document that implements the activity (i.e. leases, contracts, or grants) so that it may be transparently monitored and enforced.

(iii) Progress of the identified mitigations will be monitored and documented through an Environmental Management and Monitoring Plan (EMMP) report prepared by the Agency or entity undertaking the activity on its behalf. The Contracts Officer's Representative (COR), Agreements Officer's Representative (AOR) or comparable USAID manager of the activity shall have the primary responsibility for this function.

(iv) If an analysis of the selected mitigation measures demonstrates that the environmental impacts of the activity are no longer significant, an EA may result in a FONSI. If the Agency commits to performing the identified mitigation measures in order to reduce the level of significance of the impact, the FONSI must identify these mitigating measures, and they become legally binding and must be accomplished as the project is implemented. This is called a Mitigated FONSI. If any of the mitigation

measures identified in the FONSI are not performed, and significant adverse environmental impacts could reasonably result, the Agency must prepare an EIS.

(v) Potential mitigation measures that appear practical will be identified in the NEPA analysis. Practical measures are those that can be reasonably undertaken considering factors including: excessive cost, logistics, technical feasibility, Agency resources, and environmental benefit. This exclusion may not be used as an excuse to avoid mitigation when a Bureau or Independent Office has failed to budget reasonable time and resources to address environmental issues. This will also not be accepted in cases when serious environmental harm will result. The expectation is that reasonable practical mitigative measures to reduce or eliminate potential adverse environmental impacts can be identified and funded, or that actions can be redesigned to avoid or minimize otherwise impractical mitigation. Budgets must include funding for mitigation measures for them to be considered practical. The project or activity cannot be undertaken until all required mitigation efforts are fully resourced, or until the lack of funding and resultant effects, are fully addressed in the NEPA analysis.

(vi) The practical mitigation measures that were considered but rejected must be discussed, along with the reason for the rejection, within the EA or EIS. If they occur in an EA, their rejection may lead to an EIS, if the resultant unmitigated environmental impacts are determined significant.

(vii) The Agency or other appropriate cooperating agency will implement mitigations, an EMMP and other conditions established in the EA or EIS, or commitments made in the FONSI or ROD. Legal documents implementing the action (such as contracts, permits, and grants) will specify mitigation measures to be performed. Penalties against a contractor for noncompliance may also be specified as appropriate. Specification of penalties should be fully coordinated with the appropriate USAID legal advisor.

(viii) A monitoring and enforcement program for any mitigation will be adopted and summarized in the NEPA documentation. Whether adoption of a monitoring and enforcement program is applicable (40 CFR 1505.2(c)) and whether the specific adopted action requires monitoring (40 CFR 1505.3) may depend on the following:

(A) A change in environmental conditions or

project activities assumed in the EIS (such that original predictions of the extent of adverse environmental impacts may be too limited);

(B) The outcome of the mitigation measure is uncertain (for example, new technology);

(C) Major environmental controversy remains associated with the selected alternative; or

(D) Failure of a mitigation measure, or other unforeseen circumstances, could result in a failure to meet achievement of requirements (such as adverse effects on federal or state listed endangered or threatened species, important historic or archaeological sites that are either listed or eligible for nomination to the National Register of Historic Places, wilderness areas, wild and scenic rivers, or other public or private protected resources).

(E) Monitoring is an integral part of any mitigation system and involves enforcing the performance of the mitigation measures and determining the effectiveness of the mitigation measures.

(F) Enforcement monitoring ensures that mitigation is being performed as described in the NEPA documentation, mitigation requirements and penalty clauses are written into any contracts, leases or similar implementing agreements, and required provisions are

enforced. The development of an enforcement monitoring program is governed by who will actually perform the mitigation: a contractor, a cooperating agency, a grantee, or similar entity or by the Agency itself. The Agency is ultimately responsible for performing any mitigation activities required under its environmental compliance documents. All monitoring results will be sent to the responsible Bureau Environmental Officer. The Agency Environmental Coordinator may review such results to ensure consistent Agency-wide compliance.

(G) Effectiveness monitoring measures the success of the mitigation effort and/or the environmental benefit. In establishing the monitoring system in the EMMP, the Implementing Officer should coordinate the monitoring with their appropriate Bureau Environmental Officer.

(ix) The monitoring program should be established before the action begins. At this stage, any necessary contracts, grants, funding, and manpower assignments must be initiated.

(x) If the mitigations are effective, the monitoring should be continued as long as the mitigations are needed to address the adverse impacts of the activity.

(xi) If the mitigations were designed to reduce the level of adverse environmental impact below the level of significance and are shown ineffective, the Agency shall re-examine the mitigation measures and resolve the inadequacies of the mitigation through corrective actions or appropriate contingency mitigations that appropriately reduce the adverse environmental impact below the level of significance. If the approved mitigation measures and any subsequent corrective actions are shown to be ineffective, the Agency may be required to prepare an EIS.

(xii) This information will also be reported in summary in the relevant USAID unit's annual Operational Plan (OP) or equivalent in the Environmental Compliance Report (ECR) or equivalent chapter.

(7) Additional information. (i) Significant impact determined. If an activity receives a FONSI through the EA process and then the activity is later revised or new information becomes available which indicates that a proposed action is likely to have a significant environmental impact then an EIS will be prepared as appropriate.

(ii) No significant impact determined. If an activity is determined to have potential for a significant

environmental impact and the activity is later revised or new information becomes available that reduces the environmental impact below the level of significance, an amended EA may be performed.

(iii) Adaptive management. Completed Categorical Exclusions, Environmental Assessments and Environmental Impact Statements will be amended and processed appropriately if there are substantive changes in the project or program; new activities, additional funds, or time extensions added; or, if significant new information becomes available which relates to the potential impact of the project, program, activity, or amendment on the environment that was not considered at the time the EA or EIS was approved. When ongoing programs are revised to incorporate a change in scope or nature, a determination will be made as to whether such change may have an environmental impact not previously assessed. If so, the procedures outlined in this part will be followed.

(iv) Classified material. An EA or EIS will not normally include classified or administratively controlled material. However, there may be situations where environmental aspects cannot be adequately discussed without the inclusion of such material. The handling and disclosure of classified or administratively controlled

material shall be governed by 22 CFR part 9. Those portions of an EA or EIS which are not classified or administratively controlled will be made available to persons outside the Agency as provided for in 22 CFR part 212.

§237.7 Pesticide procedures.

(a) Actions or projects. Except as provided in paragraph (h) of this section, all proposed actions or projects involving procurement or use, or both, of pesticides - whether by USAID or a grantee, contractor or other partner - shall be subject to the procedures prescribed in paragraph (b) of this section. These procedures shall also apply, to the extent permitted by agreements entered into by USAID before the effective date of these pesticide procedures, to such projects that have been authorized but for which pesticides have not been procured as of the effective date of these pesticide procedures.

(b) When a project includes procurement or use, or both, of pesticides registered for the same or similar uses by USEPA without restriction, the Environmental Assessment or Environmental Impact Statement for the project shall include a separate section evaluating the economic, social and environmental risks and benefits of the planned

pesticide use to determine whether the use may result in significant environmental impact. Factors to be considered in such an evaluation shall include, but not be limited to the following:

(1) The USEPA registration status of the requested pesticide;

(2) The basis for selection of the requested pesticide;

(3) The extent to which the proposed pesticide use is part of an integrated pest management program;

(4) The proposed method or methods of application, including availability of appropriate application and safety equipment;

(5) Any acute and long-term toxicological hazards, either human or environmental, associated with the proposed use and measures available to minimize such hazards;

(6) The effectiveness of the requested pesticide for the proposed use;

(7) Compatibility of the proposed pesticide with target and non-target ecosystems;

(8) The conditions under which the pesticide is to be used, including climate, flora, fauna, geography, hydrology, and soils;

(9) The availability and effectiveness of other pesticides or nonchemical control methods;

(10) The provisions made for training of users and applicators; and

(11) The provisions made for monitoring the use and effectiveness of the pesticide.

(c) In those cases where the evaluation of the proposed pesticide use in the EA indicates that the use will significantly affect the human environment, the EA will include a recommendation for the preparation of an Environmental Impact Statement. An EIS may be prepared without an EA if the use of pesticides or other aspect of the project under consideration has the potential for a significant environmental impact.

(d) When the pesticide evaluation section of the EA or EIS does not indicate a potentially unreasonable risk arising from the pesticide use, mitigation measures shall be included as appropriate.

(e) When a project includes procurement or use, or both, of any pesticide by the USEPA on the basis of user hazard, the procedures set forth in paragraph (b) of this section will be followed. In addition, the EA or EIS will include an evaluation of the user hazards associated with the proposed USEPA restricted uses

(f) Only pesticides that are currently registered for the same or similar uses by the USEPA may be procured or used for Agency funded projects that occur in the United States or US territories. If a USEPA registered pesticide is approved for procurement or use in a USAID funded action and at some point during the action USEPA subsequently cancels the registration, USAID will order the contractor or grantee to stop of the procurement or use of that pesticide and will immediately undertake an amendment to the EA or EIS to decide on an appropriate USEPA registered replacement pesticide.

(g) If the project includes the procurement or use, or both of pesticides but the specific pesticides to be procured or used cannot be identified at the time the EA or EIS is prepared, the procedures outlined in paragraphs (a) through (c) of this section will be followed when the specific pesticides are identified and before procurement or use is authorized.

(h) Exceptions to pesticide procedures. The procedures set forth in paragraph (b) of this section shall not apply to the following actions or projects under emergency conditions. Emergency conditions shall be deemed to exist when it is determined by the Administrator, USAID, in writing that:

(1) An unforeseeable and significant pest outbreak has occurred or is imminent; and

(2) Significant health problems (either human or animal) or significant economic problems will occur without the prompt use of the proposed pesticide; and

(3) Insufficient time is available before the pesticide must be used to evaluate the proposed use in accordance with the provisions of this regulation.

(4) Actions or Projects including assistance for procurement or use, or both, of pesticides for controlled laboratory research or limited controlled access, small area field evaluation purposes by or under the supervision of action or project research personnel. In such instances, however, USAID will ensure that the manufacturers of the pesticides provide toxicological and environmental data necessary to safeguard the health of research personnel and the quality of the local environment in which the pesticides will be used. Furthermore, treated crops will not be used for human or animal consumption unless appropriate tolerances have been established by USEPA and the rates and frequency of application, together with the prescribed pre-harvest intervals, do not result in residues exceeding such tolerances. This prohibition does not apply to the feeding of such crops to animals for controlled

research purposes. Any pesticides used under this exception that are not registered by USEPA must be registered before they can be recommended for use in any regular USAID action or project, and successfully go through the EA or EIS process in this regulation.

§237.8 Genetically modified organisms.

(a) If projects or activities will potentially involve the procurement or use of genetically modified organisms in research, field trials, or dissemination, the Agency biosafety staff, in Washington, must review and approve it for compliance with applicable U.S. requirements before the obligation of funds and before the transfer, testing, or release of biotechnology products into the environment.

(b) This biosafety review is limited to the safety aspects of the proposed activities and typically involves external scientific peer review or demonstration of comparable safety oversight by other expert U.S. Federal agencies. The biosafety review cannot be waived or delegated.

(c) A biosafety review precludes the use of a categorical exclusion for the proposed activity. The EA or EIS for the activity will include the results of the biosafety review.

§237.9 Endangered species.

An EIS must be prepared if a proposed project, program, or activity may adversely affect a federally listed threatened or endangered species, or adversely modify its critical habitat. It is USAID policy to conduct its Agency operations in a manner that is sensitive to the protection of endangered or threatened species and their critical habitats. The EIS for each project, program or activity having an effect on the environment shall specifically determine whether the project, program or activity will have an effect on endangered or threatened species, or critical habitat.

§237.10 Filing and publishing.

All Draft, Final and Supplemental Environmental Impact Statements shall be filed electronically with USEPA's Office of Federal Activities as required in 40 CFR 1506.9. They must be filed no earlier than they are transmitted to Cooperating Agencies and made available to the public. This assures that the EIS is received by all interested parties by the time the USEPA Notice of Availability appears in the Federal Register, and therefore allows for the full minimum review periods prescribed in 40 CFR 1506.10. Such filings will be in collaboration with the relevant Bureau Environmental Officer and the Agency Environmental Coordinator.

§237.11 Public hearings.

(a) In most instances USAID will be able to gain the benefit of public participation in the process through circulation of draft scoping documents, draft final EAs and EISs and notice of public availability as set out at 40 CFR 1506.6. However, in some cases the Administrator may wish to hold physical public hearings on a Draft Environmental Impact Statement (DEIS). In deciding whether or not such a public hearing is appropriate and making a recommendation to the Administrator, heads of Bureaus or Independent Offices in conjunction with the Agency Environmental Coordinator should consider:

(1) The magnitude of the proposal in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of the resources involved;

(2) The degree of interest in the proposal as evidenced by requests from the public and from Federal, state and local authorities, and private organizations and individuals, that a hearing be held;

(3) The complexity of the issue and likelihood that information will be presented at the hearing which will be of assistance to the Agency; and

(4) The extent to which public involvement already has been achieved through other means, Such as earlier public

hearings, meetings with citizen representatives, and/or written comments on the proposed action.

(b) If public hearings are held, the documents to be discussed should be made available to the public at least fifteen (15) days prior to the time of the public hearings, and a notice will be placed in the Federal Register giving the subject, time and place of the proposed hearings. To the extent possible, such public hearings shall be held in the local community or jurisdiction where the action is proposed.

§237.12 Records and reports.

Agency Bureaus and Independent Offices will maintain copies of finalized NEPA compliance documents and approved decision documents as part of the official project files, and make them freely available to the public by posting them on the Agency's internet pages. To the extent any national security classified information or procurement sensitive information is included, those portions will be redacted before making such documents available to the public.

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Agency Regulatory Official

U.S. Agency for International Development

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